IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
SUIT NO. 40 OF 1982

1.Jamshed Nusserwanji Guzder]
2.Minoo Rustomji Shroff]
3.Smt. Siloo Kaikhushroo Kavarana]
4.Dinshaw Rusi Mehta]
5.Dadi Bejonji Engineer]
6.Rustom Sheriar Tirandaz]
7.Dinshaw Kaiki Tamboly]

All of Bombay, Indian Inhabitant]
the present Trustes of the Parsi]
Panchayat Funds and Properties]
Bombay, having their office at 209, Dr.]
Dadabhoy Nawrojee Road, Fort, Bombay,]
Bombay 400 001]...Plaintiffs.

Versus

1.Pestonji Dhujishaw Zilla]
residing and carrying on business]
at Zilla Wadi, 9,A, Turen Road]
Andheri, Bombay 400 093]
2.Maliram Gouridutt Mittal]
carrying on business at Lentin]
Chambers, Dalal Street, Bombay]
Bombay 400 023.]
3.Farmeshwar Gouridutt Mittal]
carrying on business at Lentin]
at Lentin Chambers, Dalal Street,]
Bombay 400 023.]
4.Vishwanath Gouridutt Mittal]
carrying on business at Lentin]
Chambers, Dalal Street]
Bombay 400 023.]
5.Shankerlal Gouridutt Mittal]
carrying on business at Lentin]
Chambers, Dalal Street, Bombay]
Bombay 400 023.]
6.Messrs. M.G.Mittal & Co.]
A Partnership firm carrying on]
business at Lentin Chambers]
Dalal Street, Bombay 400 023.] ..Defendants.

ALONGWITH

SUIT NO. 58 OF 1982

Pestonji Dhanjishaw Zilla]
Indian national Parsi Bombay]
Inhabitant, Zilla Wadi, Suren]
Road, Andheri (E),Bombay 400093] ..Plaintiff.

Versus.

1.Dr.Aspi Framroze Golwalla]

2.Eruch Byramsha Desai]
3.Jamshed Gulfam Kanga]
4.Homi Phiroze Ranina,]
5.Jamshed Nuserwanji Desai]
6.Minoo Rustomji Shroff]
7.Dr.(Miss)Mehroo Dhunjishaw Bengalee]
all of Bombay, Indian Inhabitants, the]
present Trustes of the Parsi Panchayat]
Fund and Properties, Bombay, having]
their office at 209, Dr. Dadabhoy]
Nowrojee Road, Fort, Bombay 400001]...Defendants.

Ms.Rajani Iyer a/w. Mr. Manjir Shah i/b. Pardiwala & Co. for the Plaintiffs in Suit NO. 40 of 1982 and for defendants in Suit No. 58 of 1982.

Mr. Jn.B.Chinai, Sr. Counsel a/w. Sanjay Jain & Mr. Choksey i/b. M/s.Choksey & Co. for the Plaintiff in SuitNO. 58 of 1982.
Mr. P.D.Zilla in person in SuitNo. 40 of 1982.

CORAM : S.K.SHAH, J.
Date of Reserving the Judgment : 06/08/2004.
Date of Pronouncement of the Judgment : 30/09/2004.

-: ORAL JUDGMENT :-

1. Both these suits are being disposed of by a Common Judgment as the parties to the Suits and the subject matter of the Suits are the same and with the consent of the Counsels on both the sides, the evidence was recorded in common.

2. Suit No. 40 of 1982 is filed by the Trustees of the Parsi Panchayat against Pestonji Dhanjishaw Zilla. The Suit No. 58 of 1982 is filed by Pestonji Zilla against the Parsi Panchayat. The other defendants in Suit No. 40 of 1982 are added as they are claiming right through the defendant No.1 Pestonji Zilla. The

Plaintiffs in Suit No. 40 of 1982 claim to be the owners of the suit lands, whereas the Plaintiff in Suit No. 58 of 1982 also claim to be the owners of the Suit lands. The Properties in Suit No. 40/1982 are nine pieces of land as Survey Nos. 30/1, 30/2, 30/3, 30/4, 84(part), 29/4, 29/6, 49/9 and 31/2 situate at Village Gundavali, near Andheri in Greater Bombay. The properties involved in Suit No. 58 of 1982 are only seven out of the aforesaid properties, namely, Survey Nos. 30/1, 30/2, 30/3, 30/4, 29/6, 49/9 and Survey No. 84(part), regarding which the Plaintiff in that Suit claims to be the owner. Consequently, there is no dispute about the ownership of the Parsi Panchayat in Suit No. 40/1982 with regard to the lands of Survey Nos. 29/4 and 31/2. The parties are referred to, hereinafter, as Plaintiff and Defendant and also the suit properties as per Suit No. 40 of 1982.

3. The Plaintiff - Trust is the registered Trust and and other Plaintiffs are the Trustees of the said Trust. They alleged that one Behram Shavaksha Panthaki was the owner of several pieces and parcels of lands, totally admeasuring about 82,669 square yards which included the suit properties. The said Behram Panthaki died on or about 3rd March, 1963 leaving a Will, dated 12th September, 1960. The Probate to the said Will was granted on 14.10.1964 in favour of Jahangir Hormasji Cama and Kaikhushru Hormasji cama. All the pieces of land totally admeasuring 82,669 square yards situate at village Gundavali near Andheri in Greater Bombay, were

mentioned in the Will. By deed of transfer, dated 16.2.1967 between Cama brothers, in their capacity as Executors of the Will of Behram Panthaki as also in their individual capacity conveyed to the Plaintiff - Trust out of the pieces of lands totally admeasuring 52283.25 square yards, equal to 43901.14 square meters, as per plan annexed to the conveyance deed. The Suit lands are comprised in the said area of lands admeasuring 52283.25 square yards.

4. The Plaintiffs further alleged that in 1963, certain lands i.e. 77 sq. mts. -out of Survey No.30/1, 93 sq.mts. out of S.No.30/3, 2002.20 sq.mts.- out of S.No. 20/4, 1.5 sq.mts.- out of S.No. 31/2, 3122.20 sq.mts.- out of S.No.84(part), 761.20 sq.mts.- out of S.No.37/7(part), 135 sq.mts.- out of S.No.37/8, 526.45 sq.mts.- out of S.No.37/10 , 177 sq.mts.- out of S.No. 37/11 were acquired for hundred feet wide approach road. They further alleged that the Trust made a claim by way of compensation for the acquisition of the said lands. However, the defendant No.1 put up a claim for compensation only in respect of the acquisition of the land out of S.No. 30/1, 30/3 and 30/4 and S.No. 84(part). A dispute with regard to the claim of compensation between the Plaintiff and the defendant No. 1 has been pending in this Court, by way of Land Acquisition Reference No. 4/1978.

5. The Plaintiffs allege that they have constructed 22 buildings in Behram Panthaki’s property after

obtaining N.A. permission. They have been paying the N.A. Assessment bills as also the Municipal Taxes in respect of 22 buildings. They also obtained exemption Order of the Competent Authority under the Urban Land Ceiling and Regulation Act, 1976 for construction of the remaining ten buildings to fulfil the desire of late Mr. Pestonji. As such it is alleged that the Plaintiffs are in possession of the entire suit lands and the record of rights also show their ownership and possession over the suit lands. They allege that somewhere in November, 1981, the defendant No.1 agreed to sell some of the suit lands to one Mr. Mittal- the defendant No.2, the Plaintiffs raised dispute about it. As a result, there was exchange of notices between the advocate of the Plaintiff and defendant No.1 & 2, which ultimately led to the filing of this Suit for declaration of the ownership over the suit lands and for consequential relief of permanent injunction restraining the defendant from disturbing the plaintiffs possession over the suit land and not to creat any third party interest in respect of the suit land.

6. The contentions of the defendant in his Suit, being Suit No. 58 of 1982 as also in Suit No. 40 of 1982 are that he has acquired the title to the aforesaid seven pieces of lands through deed of dissolution of partnership and Gift deed dated 22.12.1938. He contends that by agreement of Sale dated 31.7.1934, Mariam Sultan, who owned the suit properties agreed to sell them to Shavksha Sorabji Panthaki alongwith other pieces

of lands, which were known as ’Jinwadi’ or ’Chikkuwadi’ by conveyance deed, dated 18.9.1934. Those properties including the Chikkuwadi property, were sold to Merwanji Ardeshir, Jamsetji Nobel and Pherozshaw Shavksha, the nominees and benamidars of one Pherozshaw Merwanji Mehta, who happened to be the maternal uncle of defendant No .1. Out of the total agreed consideration of Rs. 21,000/-, Rs. 5000/- was paid as earnest money, Rs. 15,000/- were paid by Merwanji Ardeshir for and on behalf of and out of the money belonging to Pherozeshaw Merwanji Mehta, the maternal uncle of the defendant No.1. The earnest money of Rs. 5000/- which were paid were the money belonging to Dhanjishaw Dinshawji Zilla, the father of the Plaintiff.

7. He further contend that Merwanji Ardeshir, Jamshedji Nobel and Shavaksha and other were partners in the Firm called as M/s. Bharat Ginning & Pressing Co. The Factory of the Ginning and Pressing Company, the Partnership Firm was allowed by Pherozeshaw Mehta to be constructed on the land situated at Gundavali, known as Chikkuwadi by registered deed of gift, dated 22.12.1938. Phirozshaw Merwanji Mehta, the maternal uncle of defendant No.1 made absolute gift of the said property of Chikkuwadi alongwith the suit property to defendant No.1. At that time, the defendant No.1 was minor and, therefore, under the gift deed, Jahangir S. Patel was appointed Trustee with direction to handover the suit properties to the defendant No.1 on his attaining majority in the year 1948. The said deed of gift was

confirmed by Pherozeshaw Shavaksha separately.

8. It is further the contention of the defendant No.1 that the name of Firm M/s. Bharat Ginning & Pressing Co. was changed to Bharat Cotton Waste Products by a partnership deed, dated 10.4.1943. In the said Partnership deed, it was recorded that amount of Rs. 16000/- and earnest money amount of Rs. 5000/- (in respect of the conveyance, dated 18.9.1934), were paid by the defendant No.1's father Dhanjishaw Dinshaji Zilla and Pherozeshaw M.Mehta, the father and maternal uncle of defendant No.1, for and on behalf of the defendant No.1., who was then minor. It is further his contention that in the deed of dissolution of partnership, dated 18.9.1949, the said firm, namely, M/s. Bharat Cotton Waste Products was dissolved. In the said dissolution deed, it was recorded that after the demolition of the premises of the factory, the landed property would belong to the defendant No.1, who was absolute owner of the said properties and those properties are the suit properties (as per Suit No. 58 of 1982). Therefore, it is the contention of defendant No.1 that he is the owner of the suit properties and having been in possession of the suit properties since the year 1948, when he became major. He had put fencing wall around the suit property.

9. The defendant No. 1 further contend that in the year 1962 the defendant No. had mortgaged the portion of the suit property in favour of the M/s. Chhotubhai

Patel and Co. for Rs. 20730/- and subsequently he had redeemed the said mortgage by paying off the said amount. On 19.6.1962, Behram S. Panthaki executed a cultivation bond in favour of defendant No.1 wherein it was declared that the Plaintiff was absolute owner of the suit property, as mentioned in the deed of conveyance, dated 18.9.1934. In the year 1964, the defendant No.1 again mortgaged the suit property by way of equitable mortgage with one Udhavram Parikh and by deed of release, dated 29.9.1980, the property was redeemed.

10. The defendant No.1 further contended that in the acquisition proceeding, the portion of the land admeasuring. 2168 sq.mts. was acquired. It is his contention that he handed over the possession of the said piece of land to the land acquisition officer. However, the plaintiffs made false claim of compensation and that the litigation in that regard being L.A. Reference No. 4 of 1978 is pending in Court. He further contended that by way of Order of attachment, dated 7.11.1930, passed by the Income Tax Authorities, the suit properties were attached. There also the Plaintiff had applied for removal of the said attachment but failed to do so.

11. He further contended that in 1972, taking disadvantage of the absence of the defendant No.1. the Plaintiff illegally encroached upon the portion of the suit property, bearing S. No. 30/1 and to the extent

of area of 21 sq.mts. and erected thereon the building. He had lodged a complaint with police in that regard and had also filed a Civil Suit in City Civil Court being Suit No. 2551 of 1972. He further contended that on 27.11.1981, the Plaintiffs encroached upon the remaining portion of the suit property wrongfully with a view to erect another building. As such there was exchange of notices between the advocate of the Plaintiff and defendant No.1 and ultimately, the defendant No.1 filed the Suit No. 58 of 1982 praying for declaration that he is the absolute owner of the suit properties (in Suit No. 58 of 1982) and for declaration that building No. 7 erected on his plot of land was unlawfully erected and for a direction to remove the said building or in the alternative the plaintiff should b directed to pay the compensation of Rs. 78,25,000/- to the defendant No.1 and consequential reliefs.

12. In view of the rival pleadings of the parties, the following issues were formulated in Suit No. 40 of 1982:-

ISSUES	FINDINGS.
(1) Whether the plaintiffs prove that they are the owners of the lands (described in Exhibit-'N' to the plaint) by virtue of the Deed of Transfer dated 16.2.1967 as claimed in paragraph 3 of the plaint and	..In the affirmative.

as denied in paragraph 1 of the written statement ?

(2) Whether the Plaintiffs prove that they are in possession of the lands (described in Exhibit 'N' to the plaint) since 16.2.1967 as claimed in plaint and as denied in paragraph 3 of the written statement? ..In the affirmative.

(3) Whether the defendant No.1 proves that he is the owner of the land (described in Exhibit 'N' to the plaint) as alleged in paragraph 2 of the written statement? ..In the negative.

(4) Whether the defendant No.1 proves hat the plaintiffs are trespassers upon the said lands as alleged in paragraph 7 of the written statement? ..In the negative.

(5) What Order & Reliefs? ..As per final Order.

13. In view of the rival pleadings of the parties, the following issues were formulated in Suit No.58 of 1982 :-

ISSUES	FINDINGS.
(1) Whether the suit, as framed is not maintainable as all the trustees are not joined in the suit ?	..Does not ..arise
(2) Whether the Plaintiff proves that he is the owner of the suit lands?	..In the ..negative.
(3) Whether the plaintiff is in possession of the suit property since the year 1948, if yes, what is its effect ?	..In the ..negative.
(4) Whether the plaintiff proves that the defendants are rank trespassers ?	..In the ..negative.
(5) Whether the Plaintiff proves that the alleged Deed of Gift dated 22.12.1938 is genuine, legal and valid ?	..In the ..negative.
(6) Whether the Plaintiff proves that the Deed of partnership dated 10.4.1944 and the deed of dissolution of partnership dated 18.9.1949 are genuine and valid documents ?	..In the ..negative
(7) Whether the plaintiff is entitled to damages of Rs. 78,25,000/- or any other amount as alleged in paragraph 34 of the plaint and as denied in paragraph 45 of the Written Statement ?	..Does not ..survive. Defendant No. 1 is not entitled to any damages.
(8) What Order & Relief,if any?	..As per final Order.

AS TO ISSUE NOS. 1 AND 3 OF SUIT No. 40 OF 1982 AND AS TO ISSUE NOS. 2,5 & 6 OF SUIT No. 58 OF 1982.

13. The Plaintiff-Trust has examined one of its Senior Executive of the Parsi Panchayat Funds & Properties PW 1 Parvez Bamanshah Aaibara and PW 2 Parvez Homi Driver, who is resident of Panthaki Baug. The defendant No.1 has examined himself in Suit No. 58 of 1982. It may be pointed out at this juncture, as stated

above, by consent of the parties, the evidence was recorded in common in respect of both the Suits.

14. Plaintiffs' witness Parvez Aaibara - PW 1 has stated that the Suit properties are given to the Trust as per the last wish of late Behram Panthaki, as incorporated in his Will, dated 12.9.1960. He further stated that the Executors under the Will (Exhibit 'B'), namely Cama Brothers conveyed the suit lands to the Trust by a Deed of Transfer, dated 16.2.1967 (Exhibit 'A"), after obtaining the Probate to the Will on 24.10.1964 (Exhibit 'B').

15. A perusal of the Will about which the Probate has been obtained at Exhibit 'B' would show that Behram Panthaki had appointed Seth Hormasji Cama and Kaikhushru Hormasji Cama as Executors and Trustees of his Will and testament. The Will also shows that deceased Behram Panthaki devised and bequeathed all his properties whatsoever and wherever situate, to the Trustees in the Trust known as Parsi Panchayat, Bombay for the purpose of building housing colony for poor and deserving parsi persons and had directed under the Will to the two Cama brothers who were Executors under the Will to hand over all the properties to the Trustees of the said Trust, making it clear that the property would be of the Trust absolutely and without in any manner shattering the absoluteness of the gift made by the Will. This Will was Probated on 24.10.1964 by Order of this Court in Petition No. 340 of 1963. Paragraph 19 of the Will

describes the properties as " pieces of agricultural land situated at village Gundavali and village Vileparle", admesuring in all 82669 square yards on the estimated market value as per the Valuation Report, dated 24.10.1963 of K.A. Patell, Chartered Architect of M/s. K.A.Patell and Company, at Rs. 4,86,666/-. The Plaintiffs have also produced the deed of transfer at Exhibit 'A'. This was executed by two Cama brothers as executors under the Will and also in their individual capacity, in favour of the Plaintiff Trust and Trustees. What was transferred under this deed of transfer was all the lands described in paragraph (A) of the Schedule annexed to the Deed of Transfer. This Schedule 'A' comprises of several lands described thereunder as Survey Numbers and all the nine pieces of land which are the subject matter of this Suit, are included in the said description. The deed of transfer further mentions in clause A(1) that :-

> "the Trustees will hereafter hold the lands hereditaments and premises described in the Schedule hereunder written upon trust to utilise and apply the same for establishing a Housing Colony for poor and deserving Parsis as provided in the said Will of the deceased Behram S. Panthaki."

The evidence of the Plaintiff in this regard has gone unchallenged. Therefore these documents establish that under the probated Will [Exhibit 'B'] of the deceased Behram Panthaki, the Suit lands were directed to be transferred or to be handed over to the Plaintiff -Trust as absolute owners. As per these directions of the deceased Behram Panthaki, the Executors under the Will,

the two Cama brothers, by deed of transfer dated 16.2.1967 [Exhibit -'A'] actually transferred several pieces of the lands including the Suit lands to the Trust. These documents, therefore, establish the ownership of the Plaintiff - Trust over the Suit properties.

16. The contention of the defendant, however, is that under the Award passed by the two Arbitrators in respect of the dispute between himself and the deceased Behram Panthaki, the land admeasuring 3-acres and 36-gunthas, was given to him as owner, by way of settlement of the dispute. The said Award is produced at Exhibit 'A' in Suit No. 58 of 1982. The Award is dated 30th March, 1951.

17. It will be necessary to see as to what effect the Award has on the rights of the parties to the properties purported to be divided between the parties, as per the Award. In case, the Award is acceptable to the extent of deciding the rights of the parties to the properties, it will have to be considered as to what effect it has on the bequest made by late Behram Panthaki by his Will and subsequent transfer made by his Executors under the Will in favour of the Plaintiff-Trust.

18. A perusal of the Award [Exhibit 'A'] indicates that the Award was passed by the two arbitrators to whom the dispute between Behram Panthaki and the defendant No.1 was referred. It is contended on behalf of the

defendant No.1 that by this Award, the land admeasuring 3-acres and 36 gunthas was given to the defendant No.1 and the remaining land of 9-acres and 3-gunthas was given to Behram Panthaki. A perusal of the Award also indicates that there was a dispute between Behram Panthaki and the defendant No.1 raised before the Court of Mamletdar, Andheri, being Case No. RTSR/27/2950, wherein the defendant No.1 was the applicant and Behram Panthaki was the Respondent. The Award further specifies that the two arbitrators were appointed as per the agreement in writing between the applicant and the respondent therein to give final Award in and upon the matters described in the said agreement. That agreement,however, is not filed in this case. In the Award there is reference to the conveyance deed dated 30.8.1939 (Exhibit 'J'), whereby Shavaksha Panthaki, the father of Behram Panthaki had conveyed the lands and properties to Mohammed Hussain Dehdasti. There is also reference to Registered Conveyance Deed, dated 8.4.1920, whereby the said Mohammed Dehdasti had purchased the properties from Joshi Mulji Purushottam. There is also reference to the Registered Conveyance made in the year 1934, whereby the same properties sold out by the heirs of Dehdasti in favour of one Nobel, whereunder the assignee Gunjishaw Dhanjishaw Zilla, the father of the Defendant No.1, reserved his claim because of the decree in their favour and the said decree was amalgamated with the conveyance, which was made in 1934. There is reference to part of the properties having been gifted to the defendant No.1 on 22.12.1938 and these properties

having been merged in that deed of conveyance of 1934. There is also reference to amalgamation of the land admeasuring 3-acres and 37 gunthas at village Gundavali for Bharat Cotton Products, wherein the father of the defendant No.1 was a Partner in that Firm. There is also reference to a deed of dissolution, dated 18.9.1949 showing the applicants i.e. defendant No.1's property being separate from the properties of Behram Panthaki, the Respondent therein. There is also reference to the conveyance deed, dated 25.7.1944 between Nobel and Behram Panthaki.

19. The Arbitrators gave finding of rejection of the conveyance, as the title of the property was in favour of the Respondent-therein i.e. Behram Panthaki. They also declared the applicant therein i.e. the defendant No.1 being the lawful owner of 3-acres and 34-gunthas of land as per the deed of dissolution, dated 18.9.1949. There is also observations that the facts were confirmed by Behram Panthaki and it was also agreed by the defendant No.1 i.e. the applicant, as per the gift deed, dated 22.12.1938 of the property which was purchased by Mohammed Houseman Dehdasti as per deed of conveyance dated 30.8.1919 and 8th April, 1920 and the entire properties situate at Gundavali and Vileparle, which belong to the applicant therein i.e. defendant No.1. The relevant portion of the award is as under :

> (II) And as already referred to in actio personali in the Deed of Dissolution, the Applicant is lawful owner of three acres and 34 gunthas of lands and as per the Deed of

> Dissolution dated 18th September, 1949. These facts confirmed by the Respondent and their side it is also further agreed by the Applicant side that the Applicant has as per Gift Deed, dated 22.12.1938 claim on the property, which is purchased by Mohammed Hussein Dehadasthi as per Deed of Conveyance dated 30.8.1919 and 8th April, 1020, and entire properties are situated at Gundavali and Vile Parle which belong to the Applicant and Respondent. We also agree for the same. We allow o extend and decide in favour of Respondent Behram Panthaki. to the Respondent. We allow 3/4th land, which is described in the schedule of Deed of Conveyance dated 30th August, 1919, and we also allow to extend one forth lands with a water well allowed to the Applicant. We also agree by the same and it was agreed by Behram Panthaki, the Respondent,t he decided and confirmed that he would hand over peaceful possession of Survey No. 30, Hissa No.2, which he separately purchased the properties by a registered Conveyance dated 22.12.1934, being registration No. 1222 of 1934. This plot of land is an agricultural foreland became amalgamated with the Applicant's lands merged in Survey No. 30 Hissa No.3, and Survey No. 30, Hissa No.4. The Respondent and Applicant's properties and Respondent's properties are separated and separate and Applicant and Respondent will put their fencing on their respective boundaries and Applicant will bear all costs for putting the barbed wire fencing regarding Survey No. 29, Hissa Nos. 4 and 6, Survey No. 30, Hissa Nos. 1,2,3 and 4, Survey No. 31, Survey No. 49, Hissa No. 8 & 9, Survey No. 84 at Village Gundavali.

. It is in these terms, the award was finalised. Lastly, it has been observed as under :-

> (VIII) In reference we are arbitrators in the above Arbitration already appointed as per the Agreement, and the said arbitration we pass the order under the Arbitration Act Chapter No.II. We decide that as per aforesaid proceedings that Applicant prove his bonafide ownership on the property, which already belongs to him without any doubt. We pass the order in this way in this Arbitration."

20. By this Award, the dispute between the defendant No.1 and deceased Behram Panthaki was finalised and the land admeasuring 3-acres 34-gunthas (3 acres and 37 gunthas) was given to the defendant No.1 with the

aforesaid observations that the defendant No.1 had proved his bonafide ownership on that property which already belong to him, without any doubt. The Respondent i.e. Behram Panthaki was given 9-acres and 3 gunthas as per the adjudication between the parties. In the Award, it is also clarified that the applicant had undertaken to put at his own costs a barbed wire fencing with regard to the aforesaid portion of the land of various survey numbers as described in para (ii) in the Arbitration Award. These lands are the subject matter of the suit filed by the defendant No. 1 i.e. Suit No. 58 of 1982.

21. This Award was passed in the year 1951. By this Award the dispute between the defendant No.1 and Behram Panthaki was resolved and the aforesaid adjustment as mentioned in the Award was made and the defendant No.1 was declared owner of the land given to his share. It is also pertinent to note that the various conveyance deeds by which late Behram Panthaki had purported to have sold and purchased the lands was considered and they are the same conveyance deeds which the Plaintiffs are relying on for showing the ownership of Behram Panthaki. Therefore, if the effect of the Award is taken to have finally resolved the dispute between the defendant No. 1 and Behram Panthaki by Award dated 30th March, 1951, then these conveyance Deeds will have no legal effect as between them. In that case, it will have to be held that Behram Panthaki did not have bequithable right to convey right and title of those

lands in any manner. Consequently, the Executors under the Will also will not have any powers to transfer the ownership of these lands to the Plaintiffs under the aforesaid deed of transfer dated 16.2.1967 [Exhibit 'A'].

22. With regard to the effect of the Award, the learned Counsel representing the defendant No.1 submitted that although a Decree pursuant to the Award is not obtained from the Court, the Award is a final adjudication of the dispute between the parties, namely, the defendant No.1 and Behram Panthaki and that should be binding on them. For this proposition, he has relied on the decision of the Apex Court in case of **Satishkumar and Ors. Vs. Surenderkumar and Ors. reported in AIR 1970 SC 835.** The relevant observations are as under :-

> *" The true and legal position in regard to the effect effect of an award is not in dispute. It is well settled that as a general rule, all claims which are the subject - matter of a reference to arbitration merge in the award which is pronounced in the proceedings before the arbitrator and that after an award has been pronounced, the rights and liabilities of the parties in respect of the said claim can be determined only on the basis of the said award. After an award is pronounced no action can be started on the original claim which has been the subject matter of the reference. As has been observed by Mookerjee, J. in case of Bhajahari Shah Banikya V. Behary Lal Basak, (1909) ILR 33, Cal 881 at p.898, 'the award is in fact, a final adjudication of a Court of the parties' own choice, and until impeached upon sufficient grounds in an appropriate proceeding, an award, which is on the face of it regular, is conclusive upon the merits of the controversy submitted, unless possibly the parties have intended that the award shall not be final and conclusive.... in reality, an award possesses all the elements of vitality even though it has not been formally enforced and it may be relied upon in a*

> *litigation between the parties relating to the same subject-matter. This conclusion, according to the learned Judge, is based upon the elementary principle that, as between the parties and their privies, an award is entitled to that respect which is due to judgment of a Court of last resort. Therefore, if the award which has been pronounced between the parties has in fact, or can, in law, be deemed to have dealt with the present dispute, the second reference would be incompetent. This position also has not been and cannot be seriously disputed.*"

Further it is held as under :-

> *" This Judgment is binding on us. In our opinion this judgment lays down that the position under the Act no way different from what it was before the Act came into force, and that an award has some legal force and is not a mere waste paper. If the award in question is not a mere waste paper but has some legal effect it plainly purports to or affects property within the meaning of Section 17(1)(b) of the Registration Act".*

23. The learned Counsel for the defendant No.1 further submitted that the Award is final and binding upon the parties and would bar any suit on the same cause of action. He further clarified that the dispute that was referred to the Arbitrators who passed the aforesaid Award, dated 30.3.1951, was the same as has been raised in the present two suits and, therefore, the Suit filed by the Plaintiff, who are the successors in title of Behram Panthaki, is barred and cannot be entertained with regard to the seven pieces of land, which are comprised in Suit No. 58 of 1982. For this proposition, he has placed reliance on the decision of this Court in case of Anwarali Vs. Mumtaj Husein reported in AIR 1987 BOM. 39, which was based on the aforesaid decision of the Supreme Court. The relevant observations are as under :-

"18. It has, therefore, to be held that the suit on the original cause of action would be barred because of the existence of the arbitration award in the instant case, although in express terms it is not stated in S.32 that a suit on the original cause of action would be barred, the scheme of Ss.30, 31(2) and 32 would be that a suit on the original cause of action would be barred because what is provided therein is that no suit can lie on any ground whatsoever for a decision upon the existence, effect and validity of an award and no arbitration award can be enforced, set aside, amended, modified or in any way affect otherwise than as provided in Arbitration Act, Although, therefore, the suit may not directly be framed to set aside the award as such or to vary its terms, the effect of the filing of a suit on the basis of the original cause of action for adjudication of the rights of the parties would be the same. n my view, therefore, the suit on the original cause of action stands barred by the provisions of S.32 of the Arbitration Act."

24. The learned Counsel for the defendant No.1, therefore, submitted that the Award is binding on the Plaintiff, who are claiming to be the successors in title of Behram Panthaki and, therefore, the Plaintiffs Suit will have to be dismissed with regard to the seven pieces of lands, as comprised in Suit No. 58 of 1982 and the defendant No.1's Suit being No. 58 of 1982 shall have to be decreed.

25. As against this, the learned Counsel for the Plaintiff submitted that despite the aforesaid legal position, the Award is not intelligible and it is not clear as to what was dispute and the the area of the lands and that the documents referred to in the Award are not produced, particularly, the dissolution of

partnership deed and gift deed and, therefore, it is submitted that the Award cannot be acted upon.

26. The learned Counsel for the Plaintiff also submitted that the 7x12 extract in respect of all the Suit lands have been continuously showing the name of Behram Panthaki as owners right up to the date of the Will, i.e. 12.9.1960 of late Behram Panthaki and till the deed of transfer dated 16.2.1967, when those pieces of lands were transferred in favour of the Plaintiff-Trust. She also submitted that the permission under the Urban Land Ceiling Act was obtained by the Plaintiffs in the year 1971. The land revenue was paid by the Plaintiffs as also the conversion charges of the land for N.A. purposes was also obtained by the Plaintiffs. Not only that but the Plaintiffs also constructed building on the suit lands and at no point of time, the defendant No.1 had objected to all these acts of ownership performed by the Plaintiffs. It is, therefore, the contention of the Plaintiffs that they are the owners of the Suit land.

27. It was further submitted on behalf of the Plaintiffs that although the defendant No.1 claim to have acquired possession over the land that was conveyed, the same has not been yet finally decided and the dispute is pending in Court. According to the defendant No.1, there was dispute with regard to the

attachment of the suit land for the purpose of recovery of income tax claim of the amount of Rs. 24,74,000/- and he had deposited amount of Rs. 2 lacs. This court has granted him permission to sell the property partly for payment of the income tax dues. He further stated that when there was delay in payment of the income tax, the income tax Authorities had put the properties to auction, the plaintiff had preferred and lodged a claim in relation to the said property to the Tax Recovery Officer, however, the Tax Recovery Officer has rejected their claim. All these are the act of ownership but they are not sufficient to establish the ownership over the suit land.

28. For the purpose of proving the ownership the Plaintiffs have relied upon mainly two documents, the Will at exhibit ’A’ and the Deed of Transfer Exhibit ’B’. As stated above, if the Award is accepted, as binding, for that purpose that Will supersede the aforesaid two documents. So far as the Award is concerned, as has been held by the Apex Court, it is not merely a piece of paper; but it finally decides the dispute between the parties. In this regard, the submission on behalf of the plaintiffs is that in the first place, the award is not admissible in evidence as the defendant No.1 has not referred to it at all in the plaint of his Suit No.58 of 1982. Secondly, it is submitted that the award is unregistered as required to be registered under Section 17 of the Registration Act, 1908. Thirdly, it is submitted that the award has not

been presented to the court and no decree has been obtained in terms of the award as required by the provisions of Sections 14 and 17 of the Arbitration Act of 1940. Fourthly, it is submitted that the effect of non-registration of the agreement as prescribed in Section 49 of the Registration Act would be that it will not affect any immovable property comprised in the award. It is also submitted that in such circumstances the award cannot be enforced seeking declaration of the defendant No.1's right to the suit properties and consequential relief of injunction.

29. As against this, the learned Counsel representing the defendant No.1 submitted that as per the Judgment of the Apex Court in the case of Satishkumar (supra), the award is binding between the parties and in view of the decision of this Court rendered in Akbarali's case (supra), no suit can be filed on the same cause of action. It is further his submission that although no decree is obtained as per the provisions of the Arbitration Act and although the award is not registered as required under the provisions of the Registration Act, the award is binding on the parties. It is also submitted that by this award no rights are created, it does not require registration at all and, therefore, the effect of non-registration as contemplated in Section 49 of the Registration Act will not come into play.

30. I have given serious consideration to these submissions and it would be necessary at the outset to

observe that the award had created rights between the defendant No.1 and the deceased Behram Panthaki with regard to the lands specified in the award although it has been observed in the award that the defendant No.1 had proved his bonafide ownership in respect of the properties which belonged to him. This is so because by the award certain registered documents of conveyance in favour of Behram Panthaki have been declared to be void for reasons stated in the award and it is thereafter that it was declared that the defendant No.1 was owner of certain lands and the lands admeasuring 3 acres and 34 gunthas were given to the defendant No.1's share and the lands admeasuring 9 acres and 3 gunthas were given to the share of Behram Panthaki. Therefore, it is undoubtedly clear from the recitals made in the award that rights in respect of the properties comprised in the award were created in favour of Behram Panthaki as well as defendant No.1. This being so in view of the decision of the Supreme Court in Satishkumar's case (supra). The award required registration. As to the effect of non-registration, the provisions of Section 49 of the Registration Act are clear. They are as under :-

> "49. Effect of non-registration of documents required to be registered - No document required by section 17 [or by any provision of the Transfer of Property Act, 1882 (4 of 1982)], to be registered shall -

(a) affect any immovable property comprised therein, or

(b) .....

(c) .....

unless it has been registered:

[Provided that an unregistered document affecting immovable property and required by this Act or the Transfer of Property act, 1882 (4 of 1882), to be registered may be received as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act, 1877 (3 of 1877), (or as evidence of any collateral transaction not required to be effected by registered instrument]"

Since the award does not deal with any collateral transaction, an unregistered award has no evidentiary value. Thus, the effect of non-registration of the award would be the award will not affect any immovable property comprised therein. Consequently, the award would not create any rights in the defendant No.1 as regards the properties mentioned in the award. The Apex Court observations that the award is not a piece of paper and it has binding effect on parties were made to

decide whether award is required to be registered under S.19 of the Registration Act. In this case, as discussed above the award had stated rights between the parties to the award and therefore it required registration. since award is not registered the provisions of Section 49 of the Registration Act would follow.

31. The award has also not been presented in the Court and no Court has passed any decree in terms of the award as required by the provisions of Sections 14 and 17 of the Arbitration Act of 1940. It is, therefore, obvious that the award cannot be enforced. The contention raised on behalf of the defendant No.1 that by filing a suit, being Suit No.58 of 1982, the defendant No.1 is not enforcing the right acquired by the defendant No.1 under the award, cannot be accepted. What is submitted on behalf of the defendant NO.1 is that it is only the declaration and is not an enforcement of the right created under the award. This is however, not acceptable. Besides the declaration, the defendant No.1 is also asking for injunction which would obviously be the enforcement of right as against the plaintiffs who are successors-in-title of Behram Panthaki. In any event, as discussed above, the ward not being converted into the decree of the Court and not being registered under the Registration Act, it has no effect of creating any right in the defendant No.1 in respect of the suit

properties or the properties that are given to his share under the award.

32. The objection to the production of the award raised by the plaintiffs is also worth noting. It is undisputed that in the plaint of the suit filed by the defendant No.1, being Suit No.58 of 1982, the award has not been referred to at all. It is suddenly at the time of evidence that the award was tried to be produced without the same being included in the list of documents furnished by the defendant No.1 earlier. The award was taken on record subject to the objections. What was submitted on behalf of the defendant no.1 was that objection was only one which was directed to be considered later on, and that objection was only to the effect that the award was not earlier disclosed in the list of documents produced by the defendant No.1. However, this submission is not acceptable. All objections were kept open while taking this award on record. This was obvious as there was no reference to this award at all in the pleadings of the defendant No.1. and the documents were sought to be produced for the first time at the time of evidence. Apart from this, even if the award is taken on record, as discussed above, its evidentiary value would be zero as it is neither registered nor a decree in terms of the award has been obtained and, therefore, the award would be of no avail to the defendant No.1 to establish the title to the suit property. The award

also cannot be enforced for want of decree having been obtained or it having been registered. Under these circumstances, it will have to be held that the award does not create any right in the defendant No.1 in respect of the suit property.

33 In this regard, it is also pertinent to note that it is not clear as to what was the dispute that was referred to the Arbitrators. What was the litigation pending in the Mamlatdar's Court from which the reference was made to the Arbitrators, in view of the agreement between Behram Panthaki and the defendant No.1. There is reference to partnership, dissolution of partnership as also the gift deed in the award. These documents are also referred to by the defendant No.1 in his suit as well as the Written Statement filed by him in Suit No.40 of 1982. However, these documents have not been produced nor they have been admitted in evidence. Under the circumstances, it is not intelligible as to what was the dispute that was decided by the Arbitrators. Under these circumstances, it cannot be said that a suit on the same cause of action cannot be filed as has been held in Akbarali's case (supra).

34. Under the circumstances, it has to be held that the award does not have any legal effect of creating any right in defendant No.1 in respect of

the suit property. It is further pertinent to be noted that the defendant No.1 has done no act of ownership in respect of the suit properties whereas the plaintiffs have done all the acts of ownership in respect of the suit properties and they are in possession of the suit properties as shall be discussed later.

35. As regards the Plaintiffs' title, I have already discussed that the Plaintiffs are the owners of the Suit lands under the deceased Behram Panthaki's Will and the deed of conveyance. Plaintiffs have also filed evidence tracing back Behram Panthaki's title to the Suit land up to the year 1906 and produced various documents, which are registered conveyance deeds. This documentary evidence has not been challenged by the defendant No.1. Out of nine pieces of lands, as described in Exhibit 'N' to the plaint in Suit No. 40 of 1982. Seven lands, namely, Survey No. 29/6, 30/1, 30/2, 30/3, 31/2, 49/9 and 81/4 were held by Merwanji Ardeshir J. Nobel and the remaining part by Pheroze Panthaki. These owners by their respective conveyance deeds dated 26.7.1944 [Exhibit 'I'] and dated 5.9.1946 [Exhibit 'H'] transferred them to Behram Panthaki. Therefore, the title of these seven pieces of lands was transferred to Behram S. Panthaki by these two conveyance deeds i.e. Exhibit 'I' and 'H', respectively. The other two pieces of lands, namely, Survey Nos. 30/4 and 29/4 stood

respectively in the name of D'Mello and Vaz, who transferred them by conveyance deed dated 23.12.1947 [Exhibit 'D'] and 18.2.1955 [Exhibit 'C'] to Behram S. Panthaki. As such, all the nine pieces of land were acquired by Behram Panthaki by the aforesaid conveyance deeds and became the owner thereof. Not only this, but the Plaintiffs have also traced back the title to the predecessor in title of Merwanji Ardeshir J. Nobel, Pheroze Panthaki, D'Mello and Vaz. The lands of Survey No. 29/6, 30/1, 30/3, 31/2 and 81/4 were originally held by Dehdasti and he transferred them to Merwanji Ardeshir J. Nobel and Pheroze Panthaki by Registered conveyance deed, dated 18.9.1934 [Exhibit 'G']. Similarly, the land of Survey No. 30/2 was owned by Perera, who transferred it to Merwanji Ardeshir J. Nobel and Pheroze Panthaki by registered conveyance deed, dated 22.12.1934 [Exhibit 'F']. Perera also own land of Survey No. 49/9 and transferred it to Merwanji Ardeshir J. Panthaki by registered deed, dated 20.1.1936 [Exhibit 'E']. It is not necessary to trace back the land to the predecessor in title of the aforesaid owners who transferred them to the predecessors in title of Behram Panthaki. This evidence, therefore, sufficiently establishes that Behram Panthaki has acquired the title to all the nine pieces of lands and was the owner of all of them at the time, he made the Will bequeathing the lands for the purpose of the plaintiffs trust, as discussed above. All this evidence, therefore,

sufficiently establishes the Plaintiff's title over all the nine pieces of suit lands, described in Exhibit 'N' to the plaint.

36. As regards these issue Nos. 5 & 6 in Suit No. 58 of 1982, defendant No.1 has not produced any documentary evidence and has admitted in his evidence, the Gift deed dated 22.12.1934=, partnership deed dated 10.4.1944= and the deed of dissolution, dated 18.9.1949, as alleged by the Plaintiff. Therefore, the issue No. 1 in Suit No. 40 of 1982 shall have to be answered in affirmative, whereas, issue No. 2,5 and 6 in Suit No. 58 of 1982 shall have to be answered in negative.

AS TO ISSUE NO. 1 IN SUIT NO. 58 OF 1982

37. Since all the trustees have been joined as parties to the Suit, this issue does not arise and, therefore, the same is answered accordingly.

AS TO ISSUE NOS. 2 AND 4 IN SUIT NO. 40 OF 1982; AND ASK TO ISSUE NOS. 3 AND 4 IN SUIT NO. 58 OF 1982.

38. As regards the possession, the parties have led meagre oral evidence. The Plaintiff's witness though have stated regarding possession, they have no personal knowledge of tracing back to the period of acquisition of title to the suit lands by Behram

Panthaki. At any rate, however, it is clear from the pleadings of the parties and the evidence of the parties that at all stages there was dispute as to the possession between the owners and that fact has not been finally decided in any of the litigations, some of which are still pending. In this regard there is documentary evidence showing possession of the Plaintiffs over the suit lands. The documentary evidence mainly consist of 7/12 extracts of the suit lands, showing not only the plaintiffs but also the predecessors in title of the plaintiffs possession, which are at Exhibit 'P' collectively, at Exhibit 'O', which are mutation entries Nos. 1314, 1494, 1467, 1563, 1597 and 1598, showing Behram Panthaki's name as holder of the Suit properties. The Plaintiff's witness has also stated that all along, they have paid land revenue in respect of the agricultural land, get the land converted into non-agricultural usage and have paid the land revenue. Plaintiff's witness also stated that the plaintiffs have constructed buildings over the suit land after getting the N.A. permission and have paid the Municipal Taxes till date. The receipts are produced at Exhibit 'T'. Plaintiff's witness also stated that the defendant NO.1 had filed a declaration under Section 6(1) of the Ceiling on Agricultural Lands Act and the Collector had passed the Order under Section 8(4) of the same Act on 31.10.1981 and the same was confirmed by the Additional Collector, by his Order dated 15.2.1984,

accepting the declaration in favour of the defendant No.1 and accordingly change entry No. 1598, dated 19.4.198 was made . The lands involved were Survey Nos. 30/1, 30/3, 30/4, 84/1 and 29/6. Against that decision, the Plaintiffs had filed complaint to the Collector, Mumbai, who directed the Additional Collector to review his Order. Accordingly, the Additional Collector reviewed his Order by his Order dated 30.5.1995 and cancelled the Change Entry No. 1598 and restored the Entry to the name which stood before the cancellation, entry showing the lands standing in the name of the Plaintiffs. Against that Order, the defendant NO.1 had filed Revision Petition before the Additional Commissioner, Konkan Division, Mumbai being RTS No. 52 of 1997, which came to be dismissed by Order dated 31.5.1999. Against that Order, a Writ Petition being Writ Petition No. 2415 of 1999 was filed in this Court and this Court dismissed the Writ Petition. Therefore, the evidence, which has been led by the parties showed the plaintiffs' possession over the suit lands and even otherwise, they are entitled to the possession as they were proved to be the owners thereof. The defendant No.1 has not only failed to prove the ownership but also his possession over the suit lands. Consequently these issues i.e. Issue No.2 in Suit NO. 40 of 1982 shall have to be answered in the affirmative and Issue No. 4 in Suit No. 40/1982 and Issue No. 3 and 4 in Suit No. 58 of 1982 shall have to be answered in the negative.

AS TO ISSUE NO. 7 IN SUIT NO. 58 OF 1982:

39. In view of the above findings, this issue does not survive and the defendant No.1 is not entitled to any damages whatsoever.

40. In view of the aforesaid findings, I proceed to pass the following Order:-

ORDER

SUIT NO. 40 OF 1982 :

(1) The Suit is hereby decreed in terms of prayer clause ()a), (b) (i), (ii), (iii).

(2) In the circumstances of the Suit, no Order as to the costs.

SUIT NO. 58 OF 1982 :

(1) The Suit is dismissed.

(2) In the circumstances of the Suit, no Order as to the costs.

.....

[S.K.Shah, J.]

Godbole

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO. 40 OF 1982
ALONGWITH
SUIT NO. 58 OF 1982

Date of Decision : September 30, 2004.

For Approval and Signature :

The Honourable Mr. Justice S.K. Shah :

1. Whether Reporters of Local Papers may be allowed to see the Judgment?

2. To be referred to the Reporters or not?

3. Whether Their Lordships wish to see the fair copy of the Judgment?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950, or any Order made thereunder?

5. Whether it is to be circulated to the Civil Judges ?

6. Whether the case involves an important question of law and

whether a copy of the Judgment should be sent to Nagpur, Goa and Aurangabad office?

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
SUIT NO. 40 OF 1982

1.Jamshed Nusserwanji Guzder]
2.Minoo Rustomji Shroff]
3.Smt. Siloo Kaikhushroo Kavarana]
4.Dinshaw Rusi Mehta]
5.Dadi Bejonji Engineer]
6.Rustom Sheriar Tirandaz]
7.Dinshaw Kaiki Tamboly]

All of Bombay, Indian Inhabitant]
the present Trustes of the Parsi]
Panchayat Funds and Properties]
Bombay, having their office at 209, Dr.]
Dadabhoy Nawrojee Road, Fort, Bombay,]
Bombay 400 001]...Plaintiffs.

Versus

1.Pestonji Dhujishaw Zilla]
residing and carrying on business]
at Zilla Wadi, 9,A, Turen Road]
Andheri, Bombay 400 093]
2.Maliram Gouridutt Mittal]
carrying on business at Lentin]
Chambers, Dalal Street, Bombay]
Bombay 400 023.]
3.Farmeshwar Gouridutt Mittal]
carrying on business at Lentin]
at Lentin Chambers, Dalal Street,]
Bombay 400 023.]
4.Vishwanath Gouridutt Mittal]
carrying on business at Lentin]
Chambers, Dalal Street]
Bombay 400 023.]
5.Shankerlal Gouridutt Mittal]
carrying on business at Lentin]
Chambers, Dalal Street, Bombay]
Bombay 400 023.]
6.Messrs. M.G.Mittal & Co.]
A Partnership firm carrying on]
business at Lentin Chambers]
Dalal Street, Bombay 400 023.] ..Defendants.

ALONGWITH

SUIT NO. 58 OF 1982

Pestonji Dhanjishaw Zilla]
Indian national Parsi Bombay]
Inhabitant, Zilla Wadi, Suren]
Road, Andheri (E),Bombay 400093] ..Plaintiff.
Versus.
1.Dr.Aspi Framroze Golwalla]
2.Eruch Byramsha Desai]
3.Jamshed Gulfam Kanga]
4.Homi Phiroze Ranina,]
5.Jamshed Nuserwanji Desai]
6.Minoo Rustomji Shroff]
7.Dr.(Miss)Mehroo Dhunjishaw Bengalee]
all of Bombay, Indian Inhabitants, the]
present Trustes of the Parsi Panchayat]
Fund and Properties, Bombay, having]
their office at 209, Dr. Dadabhoy]
Nowrojee Road, Fort, Bombay 400001]...Defendants.

Ms.Rajani Iyer a/w. Mr. Manjir Shah i/b. Pardiwala & Co. for the Plaintiffs in Suit NO. 40 of 1982 and for defendants in Suit No. 58 of 1982.

Mr. Jn.B.Chinai, Sr. Counsel a/w. Sanjay Jain & Mr. Choksey i/b. M/s.Choksey & Co. for the Plaintiff in SuitNO. 58 of 1982.
Mr. P.D.Zilla in person in SuitNo. 40 of 1982.

CORAM : S.K.SHAH, J.
Date of Reserving the Judgment : 06/08/2004.
Date of Pronouncement of the Judgment : 30/09/2004.

. For the reasons separately recorded in the Judgment the Honourable Court has passed the following Order :-

ORDER

SUIT NO. 40 OF 1982 :

(1) The Suit is hereby decreed in terms of prayer clause ()a), (b) (i), (ii), (iii).

(2) In the circumstances of the Suit, no Order as to the costs.

SUIT NO. 58 OF 1982 :

(1) The Suit is dismissed.

(2) In the circumstances of the Suit, no Order as to the costs.

.....

[S.K.Shah, J.]